

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.27132 OF 2005

DATED:21.12.2005

Between:

Syed Zakiuddin

...Petitioner

And

The A.P. State Wakf Board

Rep. by its Chief Executive Officer,

Huj House Building, Nampally, Hyderabad and others

...Respondents

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ORDER:

The petitioner filed the instant Writ Petition aggrieved by the proceedings of the third respondent dt.30.7.2005 and the proceedings of the first respondent dt.3.12.2005. He seeks invalidation of both the orders on grounds more than one.

It is the case of the petitioner that the petitioner's father Syed Rafiuddin was the successor muntakab holder as per the Gazette Notification (published in A.P.Gazette Supplement, Part-II) dt.14.11.2002, that his grand-father was original Muthawalli of Masjid-e-Badurddin situated at Durki Village, Birkur Mandal, Nizamabad District, with attached inam of land admeasuring Acs.16.00 which was notified wakf. After death of the father, wife of Syed Rafiuddin, petitioner and three

other sons survived. It is the further case of the petitioner that during his life time, Syed Rafiuddin made an application to third respondent for succession of inam in his favour, that father of the fifth respondent objected during enquiry and third respondent issued proceedings dt.19.9.1966 based on the compromise, according to which the petitioner's father shall perform the duty of Pesh Imami and father of fifth respondent shall perform the service of Mouzani with shikmi rights to other three sons of Syed Rafiuddin. It appears, the third respondent on an application made by fifth respondent again issued proceedings dt.30.7.2005 recognizing legal- heir-ship of fifth respondent for the purpose of rendering religious services to the wakf in question.

The fifth respondent approached the first respondent who by order dt.3.12.2005 appointed him as Muthawalli of the Mosque under Section 42 of the Wakf Act, 1995 (for short, the Act). It appears, the fifth respondent relied on the proceedings of the third respondent dt.30.7.2005 while claiming to be legal heir of his father, Syed Allauddin. Therefore, present Writ Petition is filed challenging the two proceedings as mentioned hereinabove.

The Wakf Act, 1995 is a law intended to provide for better administration of wakfs and matters connected therewith. It is a self-contained code providing for constitution, recognition, management and administration of wakfs and for adjudication of disputes arising out of or in relation to wakf administration and management. Chapter-VIII specifically deals with judicial proceedings, and Section 83(1) mandates the constitution of Wakf Tribunals for determination of any disputed question or other matter relating to wakf or wakf property under the Act. Under sub-section (2) of Section 83 of the Act any Muthawalli or person interested in wakf or any other person aggrieved by an order made under the Act or the Rules made thereunder may make an application to the Wakf Tribunal for determination. The impugned order of the first respondent is one passed under Section 42 of the Act and therefore it will come within the phrase "an order made under the Act". This Court is convinced that this is not one such case where this Court should ignore effective alternative remedy and entertain the Writ Petition especially in view of two Division Bench judgments of this Court in **M.Bikshapathi v. Government of A.P., and Allauddin Charities** and **Zakath Wakf v. Hameed Ali**.

Therefore, giving liberty to petitioner to approach the Wakf Tribunal for redressal, this Writ Petition is dismissed.

(V.V.S.RAO, J)

21.12.2005

bnr

